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EXAMINER

LU, JIPING

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte KARL BURGESS, DAVID JONES, and
CLAIRE LOUISE ROBINS

Appeal 2008-2820
Application 10/690,116
Technology Center 3700

Decided:¹ February 6, 2009

Before JENNIFER D. BAHR, LINDA E. HORNER, and MICHAEL W.
O'NEILL, *Administrative Patent Judges*.

O'NEILL, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

¹The two month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided date shown on this page of the decision. The time period does not run from the Mail Date (paper delivery) or Notification Date (electronic delivery).

Karl Burgess et al. (Appellants) seek our review under 35 U.S.C. § 134 of the Final Rejection of claims 1-5, 7-11, 13, 14, 16, 17, 19, and 26. Claims 6, 12, 15, 18, and 20-25 were canceled. We have jurisdiction under 35 U.S.C. § 6(b) (2002).

SUMMARY OF DECISION

We REVERSE.

THE INVENTION

The claimed invention is to a device for treating fabrics inside a tumble dryer. Spec. 1:3-5.

Claim 1, reproduced below, is representative of the subject matter on appeal.

1. A device for treating fabrics in a tumble dryer comprising a reservoir for storing a fabric treatment composition and transfer means to expose fabric treatment composition from the reservoir to airflow generated inside the tumble drier and/or to directly contact fabrics in the dryer, thereby transferring a portion of the fabric treatment composition into contact with fabrics in the tumble dryer during a tumble drying cycle; characterised in that the transfer means comprises compressed foam having a compression ratio of 8 or more and an inner flow control member comprising a membrane, the compressed foam being downstream from the inner flow control member and functioning to reduce staining when contacting fabrics.

THE PRIOR ART

The Examiner relies upon the following as evidence of unpatentability:

Compa

US 3,701,202

Oct. 31, 1972

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Hirota
Miller

US 5,072,526
US 5,791,801

Dec. 17, 1991
Aug. 11, 1998

THE REJECTIONS

The following Examiner's rejections are before us for review:

Claims 1-5, 7-11, 13, 14, 19, and 26 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Compa and Miller.

Claims 16 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Compa, Miller, and Hirota.

ISSUE

The Appellants contend the Examiner erred in rejecting the claims because Compa's container 22 having a surface 32 with a series of bores 30 does not satisfy the claim limitation of an inner control member comprising a membrane. App. Br. 9-10.

The Examiner construed the term "membrane" to mean "a thin layer." The Examiner referenced a dictionary definition of "membrane" as being "[a]ny thin, often pliable, sheet or layer, esp. one forming a barrier or lining" to support the Examiner's claim construction of the term "membrane." Ans. 7.

The issue before us is as follows:

Have the Appellants shown the Examiner erred in finding that Compa's container 22 having a surface 32 with a series of bores 30 satisfies the claim limitation of an inner control member comprising a membrane?

FINDINGS OF FACT

We find that the following enumerated findings of fact are supported by at least a preponderance of the evidence. *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (explaining the general evidentiary standard for proceedings before the Office).

1. Claim 1 recites in part: “an inner flow control member comprising a membrane.”

2. The Appellants’ Specification recites in part:

The inner flow control member(s) may, for example, comprise a membrane, or a layer of polyester, polypropylene, and include Goretex and Accurel[]or the like or a woven/non-woven membrane which may be, but is not intended to be restricted to a thin skin.

Spec. 4:26 to 5:1.

3. As such, the Appellants’ Specification expressly discloses the membrane is not restricted to a thin skin.
4. An ordinary and customary meaning of “membrane” is a thin soft pliable sheet or layer. *See Webster’s Third New International Dictionary* 1408 (1961)(Entry 1 for noun “membrane”: “a thin soft pliable sheet or layer esp. of animal or vegetable origin.”) See also App. Br. 9.
5. Compa describes a device for distributing fabric conditioners within a dryer drum. Part of the device is composed of an elongated container 22 that has a plurality or series of apertures 30 therein that communicate with the interior of the container 22, the bores of which are of a predetermined size. Compa, col. 2, ll. 36-41.

6. There is no evidence that Compa's container 22, or its surface 32, is soft and/or pliable.
7. The Examiner does not rely on Miller or Hirota to describe a membrane.

PRINCIPLES OF LAW

"Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims. . . . The second step in the analyses requires a comparison of the properly construed claim to the prior art." *Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed. Cir. 2003) (internal citations omitted).

"Claim construction begins, as it must, with the words of the claims. *See Bell Communications Research, Inc. v. Vitalink Communications Corp.*, 55 F.3d 615, 619-20 (Fed. Cir. 1995)." *Vehicular Techs. Corp. v. Titan Wheel Int'l, Inc.*, 141 F.3d 1084, 1088 (Fed. Cir. 1998). But we determine the scope of the claims in patent applications not solely on the basis of the claim language, but upon giving claims "their broadest reasonable interpretation consistent with the specification" and "in light of the specification as it would be interpreted by one of ordinary skill in the art." *In re Am. Acad. of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). A patent applicant is entitled to be his or her own lexicographer of patent claim terms; although, in *ex parte* prosecution it must be within limits. *In re Corr*, 347 F.2d 578, 580 (CCPA 1965). The applicant must do so by placing such definitions in the Specification with sufficient clarity to provide a person of ordinary skill in the art with clear and precise notice of the meaning that is to be construed. *See also In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994) (although an inventor is free to define the specific terms used to describe the

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invention, this must be done with reasonable clarity, deliberateness, and precision; where an inventor chooses to give terms uncommon meanings, the inventor must set out any uncommon definition in some manner within the patent disclosure so as to give one of ordinary skill in the art notice of the change). Finally, our interpretation of disputed language must be reasonable in light of all the evidence before the Board. *See In re Morris*, 127 F.3d 1048, 1055 (Fed. Cir. 1997) (“The question then is whether the PTO’s interpretation of the disputed claim language is “reasonable.” ... We conclude that the PTO’s interpretation is reasonable in light of all the evidence before the Board.”).

It is elementary that to support an obviousness rejection, all of the claim limitations must be taught or suggested by the prior art applied (*see In re Royka*, 490 F.2d 981, 984-85 (CCPA 1974)) and that all words in a claim must be considered in judging the patentability of that claim against the prior art (*In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970)).

Appellants have the burden on appeal to the Board to demonstrate error in the Examiner’s position. *See In re Kahn*, 441 F.3d 977, 985-86 (Fed. Cir. 2006) (“On appeal to the Board, an applicant can overcome a rejection [under § 103] by showing insufficient evidence of *prima facie* obviousness or by rebutting the *prima facie* case with evidence of secondary indicia of nonobviousness.”) (Quoting *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998)).

ANALYSIS

Claim 1 requires the inner flow control member to comprise at least a membrane. Fact 1. The Appellants’ Specification discloses the membrane to be a textile type of material. Fact 2 and see also App. Br. 9. The ordinary

and customary meaning of membrane is a thin, soft, pliable sheet or layer.²

Fact 4. This definition is consistent with the description and examples of the “membrane” in the Appellants’ Specification. Fact 2. In particular, the examples cited in the Appellants’ Specification are textiles, which are generally recognized as being both thin and pliable. The Appellants’ Specification expressly discloses the membrane is not restricted to a thin skin. Fact 3. Therefore, given all of the evidence before this panel, the broadest reasonable interpretation in light of the Specification for the claim limitation of membrane is a thin, soft, pliable layer.

Compa describes a device for distributing fabric conditioners where part of the device is composed of an elongated container 22 that has a plurality or series of apertures 30 therein that communicate with the interior of the container 22, the bores of which are of a predetermined size. Fact 5. There is no evidence that Compa’s container 22, or its surface 32, is soft and/or pliable. Fact 6. As such, the evidence of record brings us to the conclusion that Compa’s container 22, or its surface 32, is not a thin, soft, pliable layer.

The Examiner does not rely on Miller or Hirota to cure the deficiencies of Compa. Fact 7.

CONCLUSION OF LAW

In view of the foregoing reasons, the Appellants have shown that the Examiner erred in finding that Compa’s container 22 having a surface 32 with a series of bores 30 satisfies the claim limitation of an inner control member comprising a membrane.

² The Examiner’s finding bolsters this point. See Ans. 7, fn 1 (“Any thin, often pliable, sheet or layer, esp. one forming a barrier or lining....”)

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DECISION

The Examiner's decision to reject claims 1-5, 7-11, 13, 14, 19, and 26 over Compa and Miller and claims 16 and 17 over Compa, Miller, and Hirota is reversed.

REVERSED

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